

REMARKS

Claims 1-24 are pending in the above-identified patent application. No claims are allowed.

The 35 U.S.C. § 103 Rejection

Claims 1-24 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Admitted Prior Art (APA) in view of de Jong^{1,2}. This rejection is respectfully traversed.

According to 35 U.S.C. § 103(c),

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.³

According to the MPEP, such a commonly owned reference is only disqualified when

(A) proper evidence is filed,

(B) the reference *only* qualifies as prior art under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications filed on or after November 29, 1999 (e.g. not 35 U.S.C. 102(a) or (b)) and

(C) the reference was used in an obviousness rejection under 35 U.S.C. 103(a).⁴

¹ USP 5,802,519.

² Office Action dated March 12, 2002 at ¶ 4.

³ 35 U.S.C. § 103(c).

⁴ Manual of Patent Examining Procedure (MPEP) § 706.02(I)(3).

Common Ownership

The present application and the de Jong patent were, at the time the invention was made, owned by Sun Microsystems, Inc. Accordingly, the de Jong patent must be disqualified as prior art.


In view of the foregoing, it is respectfully requested that the rejection of claims 1-24 be withdrawn.

Request for Allowance

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below. The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1698.

Respectfully submitted,
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